

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MACK HUNT

PLAINTIFF

VS.

CIVIL NO. 1:98CVCV234-JAD

UNITED STATES OF AMERICA, ET AL

DEFENDANTS

MEMORANDUM OPINION

Defendants the National Association of Letter Carriers, AFL-CIO and the National Association of Letter Carriers, AFL-CIO, Branch 1692 (collectively hereafter NALC), have moved for summary judgment in this case, which alleges breach of duty of fair representation.

The facts relating to these defendants are as follows: In March 1998 Plaintiff, an employee of the Postal Service's General Mail Facility in Columbia, Mississippi, received a Letter of Warning for insubordinate and inefficient behavior on February 17, 1998. Believing the warning unjustly issued, Hunt asked Branch President Lee Lavender to file a grievance. At a Step 1 meeting on April 9, 1998, Ann Boyette, plaintiff's immediate supervisor, denied the NALC's grievance.

Under the terms of the Union's collective bargaining agreement with the Postal Service, the NALC had ten calendar days to appeal to Step 2, the next level of the grievance procedure. However, the same day of the Step 1 meeting, Lavender was called to the bedside of his father in Birmingham. Although he returned to work at the post office before April 19th, Lavender completely forgot about the grievance until after the appeal deadline had passed. When Lavender discovered his error, he unsuccessfully sought an extension of time to appeal from Postmaster Larry Kittrell. According to Hunt, on April 29th not knowing Lavender had defaulted on the appeal, he inquired about the status of the grievance. Lavender told him the Postal Service had

agreed to reduce the Warning Letter to an official discussion, a lower form of discipline.

Lavender denies this conversation. Approximately two weeks later the Postmaster informed Hunt that the Postal Service had not reduced the Warning Letter and that Lavender had not filed a timely appeal.¹

The NALC admits that Lavender, preoccupied by his father's illness, failed to file the Step 2 appeal, but deems it an "innocent mistake" not the result of coercion by or conspiracy with Boyette or Kitrell, as Hunt contends. When asked under oath the basis for his coercion/conspiracy theory, Hunt admitted that it was strictly a "personal opinion" based neither upon conversations with the individuals involved nor even upon gossip from other employees. He said "I just believe that that was just an attempt to use me as a scapegoat to cover himself (Lavender)" for a personal disciplinary problem Lavender had with the Postal Service. In his affidavit in response to the motion for summary judgment, Hunt again offers absolutely no factual basis for his theory.

A union does not breach its duty of fair representation unless its actions are "arbitrary, discriminatory or in bad faith." *Humphrey v. Moore*, 375 U.S. 335, 342 (1964); *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Negligent, careless, inadvertent or mistaken conduct by a union is not actionable. *Coe v. United Rubber Workers*, 571 F.2d 1349, 1350-51 (5th Cir. 1978).

Assuming for purposes of this motion that Lavender deliberately lied to Hunt on April 29th regarding the status of his grievance, that likewise does not constitute a breach of the duty of fair representation. "[F]alse statements may not create liability under the federal labor laws absent a showing of tangible injury proximately resulting from the falsehood." *Deboles v. Trans*

¹The Postal Service, originally a party to this lawsuit, has since revoked the Warning Letter as part of a settlement with Hunt.

World Airlines, Inc., 552 F.2d 1005, 1009 (3rd Cir. 1977). The lie, in essence, was harmless, in that the lie in and of itself caused no harm. The date of appeal had passed. Had Lavender informed Hunt that he had forgotten to take the grievance to Step 2, it would have likewise been irremediable on April 29. At that point Lavender unsuccessfully sought permission for an out-of-time appeal. Nothing more could have been done that was not done. Hunt has demonstrated no harm that he suffered in the two-week period between the time of the purported lie and the date of his discovery of the true status of the grievance.

For the first time in this case, in his motion in response to the summary judgment Hunt, an African-American, alleges that he was discriminated against by Lavender because of his race and that the grievances of white union members were handled more carefully. This issue was not raised in the complaint and will not be entertained by the court for the first time only days before the scheduled trial.

For these reasons, the defendants motion for summary judgment will be **granted** and the case dismissed with prejudice with costs to the plaintiff. A judgment in accordance with this opinion will be entered separately.

THIS _____ day of _____, 1999.

UNITED STATES MAGISTRATE JUDGE